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Of Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF OREGON

CARRIE MEDINA,)	
)	Case No. 3:15-cv-00232-BR
Plaintiff,)	
)	DEFENDANTS CITY OF PORTLAND, CITY
vs.)	OF GRESHAM, TRI-COUNTY
)	METROPOLITAN TRANSPORTATION
CITY OF PORTLAND, a municipal)	DISTRICT OF OREGON AND TAYLOR
corporation, CITY OF GRESHAM, a)	LETSIS' ANSWER TO PLAINTIFF'S FIRST
municipal corporation, TRI-COUNTY)	AMENDED COMPLAINT
METROPOLITAN TRANSPORTATION)	
DISTRICT OF OREGON, a municipal)	(Demand for Jury Trial)
corporation, OFFICER TAYLOR LETSIS,)	
as both an individual and in his official)	
capacity as an officer of the Gresham)	
Police Department, UNKNOWN POLICE)	
OFFICERS NOS. 1, 2 AND 3, both as)	
individuals and in their capacities as)	
officers of the Portland Police Bureau,)	
)	
Defendants.)	

In answer to plaintiff's First Amended Complaint, defendants City of Portland, City of Gresham, Tri-County Metropolitan Transportation District of Oregon (hereinafter "TriMet") and Officer Taylor Letsis, admit, deny and allege as follows:

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1.

Admit jurisdiction and venue are proper in federal court based on the allegations of plaintiff's Complaint.

2.

Admit the City of Portland, the City of Gresham and TriMet are municipal corporations existing under their respective municipal charters and the laws of the State of Oregon.

3.

Admit Officer Taylor Letsis was at all times relevant employed by the City of Gresham and acting within the course and scope of his employment for and under color of law of the City of Gresham.

4.

Admit the City of Gresham, along with the City of Portland and other governmental entities within the TriMet service area provide transit police services through a Transit Police Division pursuant to Intergovernmental Agreements between the governmental entities. Those Intergovernmental Agreements speak for themselves.

5.

Admit that at all relevant times, Gresham Officer Letsis was assigned to the Transit Police Division and remained subject to the General Orders, training, discipline and Collective Bargaining Agreements of the City of Gresham.

6.

Admit that on or about February 12, 2013, Gresham Officer Taylor Letsis was involved in the arrest of a combative male suspect in the area of S.W. 6th and S.W. Broadway in Portland, Oregon; that force was used to take the male suspect into custody, to arrest him and to overcome his violent and resistive behavior; and that

Portland Police officers were present at the scene of the arrest.

7.

Admit that Gresham Officer Letsis began looking for persons who had been potentially video recording the arrest of the combative male suspect to determine if the videos were evidence of the male suspect's crimes.

8.

Admit that Gresham Officer Letsis observed a female holding a cell phone upright with the phone camera pointed towards the scene of the arrest and on his own volition and by himself approached her and had a conversation with her; that plaintiff was uncooperative with Gresham Officer Letsis' investigation; that her demeanor, behavior and the ephemeral nature of the cell phone evidence led him to reasonably believe the evidence would be deleted or concealed if he did not take immediate steps to preserve it; that he did briefly hold her cell phone in his hands and preserved the video; that he asked her if she would now show him the video and plaintiff said she would; that plaintiff played the video for him while she held her cell phone; and that at one point during the encounter did place his hand on her forearm between her wrist and elbow and grip her arm briefly.

9.

Admit that a portion of Gresham Officer Letsis' conversation with plaintiff was captured on the cell phone video and the video speaks for itself.

10.

Admit that after viewing the video, Gresham Officer Letsis ceased his encounter with plaintiff and returned to his patrol car and the other officers to continue the processing of the male suspect; that plaintiff continued holding her cell phone up with the camera pointed towards the officers, apparently video recording them for several

minutes; and that she approached within several feet of where Officer Letsis was standing while she was doing so.

11.

Except as expressly admitted above, defendants deny each and every remaining allegation of plaintiff's First Amended Complaint either because they are untrue or untrue as phrased; or because they are opinions or conclusions, rather than allegations of fact; or because they lack sufficient information to form a belief as to their truth or accuracy at this time; or because they are irrelevant or inflammatory.

BY WAY OF FURTHER ANSWER AND FOR A FIRST AFFIRMATIVE DEFENSE

12.

Gresham Officer Letsis is entitled to qualified immunity on plaintiff's § 1983 claims.

BY WAY OF FURTHER ANSWER AND FOR A SECOND AFFIRMATIVE DEFENSE

13.

Gresham Officer Letsis is not a proper party on plaintiff's state law claims.

BY WAY OF FURTHER ANSWER AND FOR A THIRD AFFIRMATIVE DEFENSE

14.

Plaintiff's state law claims are subject to the conditions, limitations and immunities contained in the Oregon Tort Claims Act, ORS 30.260 et. seq.

BY WAY OF FURTHER ANSWER AND FOR A FOURTH AFFIRMATIVE DEFENSE

15.

Gresham Officer Letsis' actions were at all times justified, made in good faith and without malice.

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BY WAY OF FURTHER ANSWER AND FOR A FIFTH AFFIRMATIVE DEFENSE

16.

Consent and/or probable cause and exigent circumstances existed for the alleged search and seizure.

BY WAY OF FURTHER ANSWER AND FOR A SIXTH AFFIRMATIVE DEFENSE

17.

Gresham Officer Letsis' brief physical contact with plaintiff was reasonable under the circumstances.

BY WAY OF FURTHER ANSWER AND FOR A SEVENTH AFFIRMATIVE DEFENSE

18.

Plaintiff fails to state claims for relief against the City of Portland, the City of Gresham or the TriMet under 42 U.S.C. § 1983. None of the municipal corporations were deliberately indifferent to its policies or training. Gresham Officer Letsis was not the employee or agent of the City of Portland and/or TriMet.

BY WAY OF FURTHER ANSWER AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

19.

Plaintiff fails to state claims for relief under the Privacy Protection Act, 42 U.S.C. § 2000aa against any defendant. Plaintiff is not a person protected under the Act or exigent circumstances existed to reasonably believe the cell phone video would be destroyed, altered or concealed if Gresham Officer Letsis did not immediately act and he had consent to view the cell phone video. Gresham Officer Letsis was not the employee or agent of the City of Portland and/or TriMet.

BY WAY OF FURTHER ANSWER AND FOR A NINTH AFFIRMATIVE DEFENSE

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20.

Plaintiff fails to state claims for declaratory relief under 28 U.S.C. § 2201 and ORS 28.010. Gresham Officer Letsis' encounter with plaintiff was consensual, reasonable suspicion and/or probable cause existed to believe that she possessed evidence of a crime on her cell phone, exigent circumstances existed to believe that evidence would be destroyed, altered or concealed if Gresham Officer Letsis did not take immediate action, and plaintiff consented to viewing the cell phone video. Gresham Officer Letsis was not the employee or agent of the City of Portland and/or TriMet.

BY WAY OF FURTHER ANSWER AND FOR A TENTH AFFIRMATIVE DEFENSE

21.

At all material times, Gresham Officer Letsis was not the employee or agent of the City of Portland or TriMet. Under the terms and conditions of the Intergovernmental Agreements and the daily operations of the Transit Police Division, police officers assigned to Transit Police remain the employees and agents of the respective municipal entities who provided that officer for transit police services.

WHEREFORE, having fully answered plaintiff's First Amended Complaint, defendants City of Portland, City of Gresham, TriMet and Taylor Letsis pray for judgment in their favor to include an award of their costs, disbursements and attorney fees incurred herein pursuant to 42 U.S.C. § 1988.

Defendants respectfully demand trial by jury.

DATED this 21st day of August, 2015.

MILLER & WAGNER LLP

By: /s/ David C. Lewis
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Of Attorneys for Defendants
503-299-6116

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing DEFENDANTS CITY OF PORTLAND, CITY OF GRESHAM, TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON AND TAYLOR LETSIS' ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT, on the following parties at the following addresses by notice of electronic filing using the CM/ECF system:

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DATED this 21st day of August, 2015.

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